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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,384	09/16/2003	Jun Lu	4982/26	1609
29858 7590 05/17/2007 THELEN REID BROWN RAYSMAN & STEINER LLP 900 THIRD AVENUE NEW YORK, NY 10022				
			EXAMINER HASSAN, AURANGZEB	
			ART UNIT 2182	PAPER NUMBER
			MAIL DATE 05/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/663,384

Applicant(s)

LU ET AL.

Examiner

Aurangzeb Hassan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,6,9-15 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,9-15 and 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/5/2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner does not see in the specification deleting the other of the plurality of primary copies of the data source data in the specification.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In light of the 35 U.S.C. 112, first paragraph rejection above it is unclear to the Examiner as to what is represented by "deleting the other" and which component of the plurality of primary copies of the data source data is deleted.

To expedite a complete examination of the instant application, the Examiner will best interpret claim 21 to be read as loss of some media, in anticipation of applicant amending these claims to correct the above 35 U.S.C. 112 rejections.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 5, 6, 9 – 15 and 19 – 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Amundson et al. (US Patent Number 6,154,852 hereinafter "Amundson").

8. As per claim 1 Amundson teaches a method, system and a recording medium comprising:

performing a plurality of primary copies of data stored in a data source, wherein said performing of at least one of the plurality of primary copies further comprises (multiple requests are done simultaneously, column 8, lines 10 – 15 and recovery is done for one or more objects, column 12, lines 14 – 17):

dividing the data in the data source into at least a first portion of data and a second portion of data (File Data BLK, element 408, figure 4, column 4, lines 26 – 30);

transferring the first and second portion of data from the data source to a first storage medium and a second storage medium (tape 1 and 2, element 118, figure 2) using a first data stream and a second data stream respectively (column 3, lines 22 – 49);

receiving user input indicating whether or not the first portion of data and second portion of data should be combined (user specifies when to begin recovery of data, combining first and second portion of data, column 12, lines 14 – 17);

determining if the first portion of data and the second portion of data can be combined (collaborative file ID 150 provides for a validation of the recovery data recombination process, figure 2, column 6, lines 1 – 22); and

if the user input indicates that the first portion of data and the second portion of data should be combined (in order to begin recovery the user must initiate the process, column 12, lines 14 – 17), and if first portion of data and the second portion of data can

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be combined, transferring the first and second portion of data from the first and second storage medium to a third storage medium using a third combined data stream (recovery can be performed using any number of tape drives from a single, column 12, lines 13 – 34).

9. As per claims 9 and 11 Amundson teaches a system and a recording medium comprising:

copying data from a data source to a plurality of storage media wherein said copying comprises:

dividing the data in the data source into at least a first portion of data and a second portion of data (File Data BLK, element 408, figure 4, column 4, lines 26 – 30);

transferring the first and second portion of data from the data source to a first storage medium and a second storage medium (tape 1 and 2, element 118, figure 2) using a first data stream and a second data stream respectively (column 3, lines 22 – 49);

receiving user input indicating whether or not the first portion of data and second portion of data should be combined (user specifies when to begin recovery of data, combining first and second portion of data, column 12, lines 14 – 17);

determining if the first portion of data and the second portion of data can be combined (collaborative file ID 150 provides for a validation of the recovery data recombination process, figure 2, column 6, lines 1 – 22); and

if the user input indicates that the first portion of data and the second portion of data should be combined (in order to begin recovery the user must initiate the process, column 12, lines 14 – 17), and if first portion of data and the second portion of data can be combined, transferring the first and second portion of data from the first and second storage medium to a third storage medium using a third combined data stream (recovery can be performed using any number of tape drives from a single, column 12, lines 13 – 34).

As per claim 9, a management server (element 102, figure 1), a media agent connected to the management server (I/O Adapter, element 114), said management server storing a storage policy (figure 5b), the media agent is configured to access the storage policy to determine if the first and second portions of data should be combined (validation of the collaboration, column 6, lines 1 – 16), a plurality of storage media connected to the media agent (tape drive 1 – N, element 118, figures 1 and 2), and a data source (file data object, element 136, figure 2) connected to the media agent.

10. As per claim 12, Amundson teaches a method for transferring data in a storage system comprising:

dividing a data source into at least a first and a second portion of data (File Data BLK, element 408, figure 4, column 4, lines 26 – 30);

transferring the first and second portion of data from the data source to a first number of pieces of storage media (multiple tape drives, element 118, figure 1 and 2, column 3, lines 22 – 49);

accessing user input regarding whether the first and second portions of data should be combined (user specifies when to begin recovery of data, combining first and second portion of data, column 12, lines 14 – 17);

determining if the first portion of data and the second portion of data are combinable (collaborative file ID 150 provides for a validation of the recovery data recombination process, figure 2, column 5, lines 1 – 22); and

transferring the first and second portion of data from the first number of pieces of storage media to a second number of pieces of storage media, the second number being less than the first number(recovery can be performed using any number of tape drives from a single, column 12, lines 13 – 34).

The examiner interprets the first and second stream, as Amundson teaches, to represent the connection between the first two tape drives in the backup process respectively. The examiner further interprets the recovery process combining at least the first and second storage media into the third single recovery tape drive media. Amundson teaches a system where a primary set of streams is used in a backup process and upon completion a recovery process combines data from the backup tapes into the recovery tapes.

11. As per claims 2 and 10 Amundson teaches a method and a system, wherein the transfer from the first and second storage medium to the third storage medium is performed in chunks (split into reasonable chunks, column 11, lines 36 – 47).



12. As per claim 5, Amundson teaches a method wherein the transfer using the third data stream is performed based on a client identification of the first and second portion of data (Collaborative File ID, element 150, figure 2, column 5, lines 25 – 32).

13. As per claim 6, Amundson teaches a method wherein the transfer using the third data stream is performed based on respective stream numbers of the first and second streams (column 6, lines 1 – 14).

The collaborative file id allows for proper data stream recombination in the recovery stage as taught by Amundson.

14. As per claim 13, Amundson teaches a method additionally comprising providing a user notification if the first portion of data and the second portion of data cannot be combined (status for user, column 5, lines 7 – 18).

15. As per claim 14, Amundson teaches a method wherein the first portion of data is associated with a first application and the second portion of data is associated with a second application (multiple user applications 131, figure 2).

16. As per claim 15, Amundson teaches a system wherein the first storage medium has a faster access time than the third storage medium (faster access time of the first

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storage medium can be modified at the user's discretion to achieve faster backup and restore, column 1 lines 29 – 32).

17. As per claim 19, Amundson teaches a system comprising an archive module configured to store at least one storage policy relating to transferring the first and second portions of data (storage policy is the save/restore data policy, column 4, lines 26 – 55).

18. As per claim 20, Amundson teaches a system wherein the media agent is further configured to access the storage policy to determine if the first portion of data and the second portion of data are combinable (collaborative file ID 150 provides for a validation of the recovery data recombination process, figure 2, column 5, lines 1 – 22).

19. As per claim 21, Amundson teaches a method comprising deleting the other of the plurality of primary copies of the data source data (as interpreted from the 35 U.S.C. 112 rejection above, loss of media in the process, column 6, lines 61 – 65).

20. As per claim 22, Amundson teaches a method wherein the user input is stored in a storage policy (in order to begin recovery the user must initiate the process, column 12, lines 14 – 17 which dictates and is in the storage policy).

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21. As per claim 23, Amundson teaches a method wherein the storage policy further maps the first portion of data and second portion of data to physical locations of, respectively the first storage medium and the second storage medium (physical tape drives are allocated and load balancing utilizes descriptors for mapping the portions of data, column 3, lines 50 – 67).

22. As per claim 24, Amundson teaches a method comprising providing a graphical user interface for receiving the user input (User Interface 110, figure 1).

23. As per claim 25, Amundson teaches a method wherein said determining if the first portion of data and the second portion of data can be combined comprises identifying the type of data in the first and second portions of data (type has been identified for writing, column 6, lines 35 – 38).

### ***Response to Arguments***

24. Applicant's arguments with respect to claims 1, 2, 5, 6, 9 – 15 and 19 – 25 have been considered but are moot in view of the new ground(s) of rejection.

25. However for the Applicant to better understand the current rejection Examiner addresses below the Applicant's arguments filed 3/5/2007 which have been fully considered but they are not persuasive. The Applicant argues:

1) Claims 13 – 17 and 19 have not been addressed in the body of the Final Office Action.

2) Amundson does not perform plurality of primary copies.

26. As per argument 1, the Examiner notes that item numbers 13 – 18 of the Final Office Action discuss Claims 13 – 17 and 19.

27. As per argument 2, the Examiner respectfully disagrees. The Examiner has included in the new rejection after amendment, citation of multiple requests by the user to have a plurality of primary copies of data stored in a data source(multiple requests are done simultaneously, column 8, lines 10 – 15 and recovery is done for one or more objects, column 12, lines 14 – 17). Clearly from this citation one of ordinary skill in the art would recognize the flexibility of Amundson to initiate and complete multiple simultaneous copies of data stored in a data source.

The Applicant states on page 8 of the Remarks received 3/5/2007 that “**independent** Claims 9, 11 and 12 are believed to be patentably distinguished over Amundson for reasons similar to those set forth with respect to the patentability of amended independent Claim 1”. The Examiner notes that the remarks addressed to claim 1 pertained to newly amended claim limitations that **have not been included** in the amendment of claims 9, 11 and 12 and the Examiner best interprets that the Applicant does not have any arguments for the rejection therein (emphasis added).

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**Conclusion**

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aurangzeb Hassan whose telephone number is (571) 272-8625. The examiner can normally be reached on Monday - Friday 9 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Huynh can be reached on (571) 272-4147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AH

  
KIM HUYNH  
SUPERVISORY PATENT EXAMINER

5/4/07